business from the territory, if there is some way of otherwise getting it, we would have to do it, of course. You had more territory than you worked."

55 The Court:

"Is there anything in the contract or is there anything in the law which prevented this gentleman from dealing with Mr. Raney or anybody else?"

Mr. Benton:

"It was a breach of their contract, Your Honor.

The Court:

"Where is that contract?"

56 Mr. Benton.

"That contract consists of a letter of October 12, which has been marked for identification.

The Court:

"Which restricts their activities insofar as Raney is concerned?"

Mr. Benton:

"No, your Honor, but it expresses affirmatively the expectancy of the defendants to lend all possible support and cooperation, if I remember the words."

The Court:

To whom?

Mr. Benton:

To the plaintiff, Boomhower, Inc.

The Court:

To the corporation. Well, there isn't anything in that letter which says they can't deal with Raney.

63 The volume of our products purchased by Boomhower, Inc. (reading from a statement):

65 In 1950 they bought $28,094.12. The fourth quarter of 1950 they bought $6,108.00, and in the first quarter of 1951 they bought $9,558.00; in the second quarter they bought $13,322.00; $6,691.00 in the third quarter, and $2,930.00 in the fourth quarter. In the

first quarter of 1952 they bought $709.00. These figures are the prices actually paid to Fischer & Company.

66 In April, 1951, I was in Washington.

"Q. What explanation, if any, did Mr. Raney make to you as to why he had not proceeded to take on the franchise for himself?

67 "A. He made no explanation along that line because we never consummated the deal. He never had a chance to. There were a lot of 'ifs' that never materialized."

He never had a franchise from me in that territory.

68 In October, 1951, I submitted a new regular form of contract to Boomhower, Inc. for their signature.

• • •

The Court:

71 Let me see. Exhibit B, attached to your Amended Complaint, is a copy of this contract you are talking about?

Mr. Benton:

Of October, 1951.

Mr. Burt:

That is correct.

Mr. Benton:

"Q. Now when, if at all, did you cancel that contract, Mr. Mathis?

72 "A. Which contract?

"Q. The contract of October 1951.

"A. It was cancelled April 25, 1952.

"Q. And who was the franchise given to at or about that time for the Washington area?

"A. The District X-Ray Company."

• • •

That Company was headed by Dennis Kane and a man named Kramer. As I understood it, they left Boomhower, Inc. and formed the District X-Ray Company, got the line of North American, Philips X-Ray equipment, and had been selling North American, Philips X-Ray Company, for, I should say, a year or more. I don't know for sure, but my recollection is it was a year or perhaps longer. But in all events, they were already set up in business, had a line of X-ray equipment, and were selling X-ray equipment. That is the same firm that you sold the assets of Boomhower, Inc. to, I was told by Mr. Kane.

73 "Q. Did he (Kane) endeavor to acquire for himself or for District X-Ray Company the franchise of Fischer & Company to sell in the Washington area?

"A. Not while he was employed or working with Boomhower, Inc. He tried after he formed the District X-Ray Company, he and a man named Kramer, then he did try to get our line and he called me on the telephone and I told him I wasn't in a position to do any business with him."

• • •

I never agreed to give it to him until after he had cancelled the contract with Boomhower, Inc. or after I had served notice on them of my desire to cancel it.

82 Witness: EDWARD M. RANEY, called by Plaintiff:

I am employed by H. G. Fischer & Company as Field Engineer, write construction books, write sales propaganda.

96 "Q. Do you recall that on April 4th you turned in your keys to the plaintiff corporation?

"A. You demanded the keys and I gave them to you."

98 When did you first agree to go to work as an employee of Fischer & Company?

"A Mr. Mathis came to Washington and I believe it was on a Thursday. I was working for Allen (S. Allen Company) at that time. He called my 99 home and I wasn't there. When I got home, my wife gave me the message. I met him at the Reilly Hotel. On Thursday night we discussed the matter and I told him at that time that I would have to discuss it with Mrs. Raney."

• • •

99 On Friday morning I talked to him again at the hotel and I agreed to go to work.

100 Plaintiff's Exhibit 44 for identification is a copy of my application for employment (with plaintiff corporation) which you dictated in the Wardman Hotel. You didn't dictate it, you wrote it yourself on a typewriter and I signed it.

101 Plaintiff's Exhibit 45, dated October 2, 1950, bears my signature. It ties in with the first one. That was an amendment to paragraph 3, or something like that.

Mr. Benton:

May I offer these documents in evidence as proof of his relationship?

102 The Court:

You may offer them in evidence. As to what they prove, that is something else.

Mr. Burt:

I object to this so-called letter of application for a position.

• • •

103 Counsel has referred to this document apparently as a contract of employment between the witness Raney and Boomhower, Inc. This, however, is in the form of a letter which the witness testified Mr. Benton dictated, the letter being addressed to Mr. Benton himself, and it indicates apparently the terms and conditions upon which the witness would accept employment with the corporation which was not then in existence.

104 The Court:

He spoke of it once as a contract and another time as an application. Apparently it is an application for employment.

Mr. Benton:

The witness testified it became operative with the acquisition by Boomhower. I offer it in evidence.

The Court:

I don't understand that part of it. * * * How is 105 that material to this law suit?

Mr. Benton:

By showing the fiduciary relationship of this gentleman, your Honor, to Boomhower, Inc.

The Court:

Suppose it was a fiduciary relationship, couldn't he end it?

Mr. Benton:

He couldn't end it because, Your Honor, I was about to read the part of the agreement which provided he was contractually bound under it to serve for three years and therefore, if he had ended it, it would have been a breach of contract. That is the issue, whether this defendant corporation or Mr. Mathis did anything.

The Court:

Did what?

Mr. Benton:

Did anything toward causing Mr. Raney to breach his contract.

The Court:

The testimony here is you fired him.

• • •

106 Mr. Benton:

There was a written resignation sent to the plaintiff.

The Court:

Was the resignation accepted?

Mr. Benton:

Yes, Your Honor.

The Court:

Then that ended his employment, didn't it?

119 "Q. Calling your attention to the provision in your application of September 6, 1950, and I quote: 'I shall—'"

Mr. Pierce:

I object to counsel referring to that document or quoting from it because, as I understand the Court's ruling, it was not permitted in evidence.

120 Mr. Benton:

I didn't so understand it.

Mr. Pierce:

This, if Your Honor please, is a so-called letter of application.

The Court:

You objected to it and I sustained your objection?

Mr. Pierce:

That is correct. Now counsel is wanting to quote from it and interrogating the witness on the basis of a barred document, and I object.

• • •

The Reporter:

There is no marking on it at all, Your Honor, except the identification mark.

The Court:

It was not admitted?

The Reporter:

No, sir.

The Court:

You objected to it and I sustained your objection.

Mr. Pierce:

That is correct, Your Honor.

121 • • •

Mr. Benton:

• • • but it is alleged and there is evidence in this record to the effect that these defendants by their conduct did aid and abet Mr. Raney in breaching his contract to Plaintiff.

The Court:

Do you contend that they knew anything about that contract?

Mr. Benton:

Oh, yes. • • • not the precise terms of it, Your Honor.

The Court:

You say they knew about that application?

Mr. Benton:

No, I don't believe they did, but they knew about 122 his vice presidency.

The Court:

Of course they knew about his vice presidency but they didn't know anything about that document that you have in your hand, so how could they be bound by it?

• • •

The Court:
You object to it?
Mr. Pierce:
We object to it.
The Court:
I sustained the objection and that is still the ruling.

123 Witness: EDWARD M. RANEY, cross-examined:

I had very definitely determined to quit prior to writing the first letter to Mr. Mathis in which I commented upon the conditions of my employment by the plaintiff corporation. I had not previously communicated with Mr. Mathis or any other officer of the Fischer company with regard to my dissatisfaction with my employment.

126 The occasion when Mr. Benton demanded the keys occurred in the offices of Boomhower, Inc. April 4th. Mr. Benton accused me of being a crook. He accused me of a lot of things, and he demanded my personal correspondence which I refused to give him. He got ~~a little~~ wild about it and he said, "then turn
127 in your keys." So I threw the keys down on the desk and walked out of the place.—I was the Vice President. When I wrote that letter, I resigned as Vice President of the corporation.—

128 At the time I wrote the first letter to Mr. Mathis we (Mr. Benton and witness) were pretty much at odds end.

129 * * * but I will say there was constant contention from the middle of March on. Finally, around the first of April, I got a letter from him stating that, from here on out, he would sign all checks; take no more business from Otteson and Lox unless approved

by him, and don't order any more goods. In other words, all authority was removed from me.

"Q. In your letter to Mr. Mathis you indicated the possibility that the sales personnel would disintegrate?

"A. It was. I think we had lost—well, we had a man by the name of Joe Whitehead, and Joe was gone. I think it resolved down to about all we had left was Kane, Sissel and Otteson and Lox, and he had cut out Lox in this letter of April 1st.

"Q. Did Boomhower Incorporated handle any other lines besides the products of Fischer & Co.?

"A. Yes, we handled the Hamilton Furniture. We
130 handled the Electric Cardiograph. We handled basal metabolism equipment. We had quite an extensive laboratory line. We handled an item known as a microtherm made by Raytheon Company. And we had quite a general line.

"Q. Did Mr. Mathis or any other officer of the Fischer & Company ever suggest to you that you resign or sever your employment with plaintiff corporation?

"A. No, sir. I never had any contact with Mathis until after Benton and I got into it.

THADDEUS G. BENTON, attorney in behalf of Plaintiff, called as a witness for plaintiff:

183 He (referring to Raney) had misrepresented to me the profits and earning power of the company under his management. He had shown ability as a manager in the business; but I found from my investigation that he was totally unreliable as a manager, and that he was not to be trusted in a managerial capacity, but that we could control him

strictly as a salesman, and we needed his sales power. Therefore, I wanted to preserve that sales power in hope of saving the business and pulling it through.

"Q. What else did you do when you learned of this?

"A. I was—I—I engaged thereupon Mr. Kane to take over the immediate charge of the business and do what Mr. Raney had theretofore been doing • • •"

203 *Cross Examination.*

You testified here that you considered Mr. Raney an invaluable man?

"A. I did not use the word, 'invaluable', if I recall rightly."

204 "Q. Well, your complaint is predicated in large part upon the theory that Mr. Mathis or his corporation interfered with Mr. Raney's employment by you, and that that very seriously disrupted your business?

"A. Yes, we regarded Mr. Raney as a very important manager."

"Q. But a while ago you testified that you discovered that Mr. Raney was wholly unreliable and that he did not possess managerial ability and that you did not want him to continue in your employ except under a new contract which reduced him from manager to salesman, is that right?

205 "A. After I investigated in April, I so found, yes."

I first met Mr. Mathis personally, I believe, in November or December of 1950 after I had purchased the business.

206 * * * I made no investigation as to the status of the relation between the company I was buying in Washington and the manufacturer in Chicago; I accepted Mr. D. W. Boomhower's—Ed Raney's promises to me in that respect.

"Q. Well, you knew that Mr. Boomhower, a proprietorship, was working or operating under a franchise agreement with Fischer, did you not?

"A. I did not know what the agreement was. I knew—

"Q. Well, you were buying a business. Did you not investigate the nature of that business' relationship with its chief supplier?

"A. I never saw or investigated the firm or any written contract that there might have been, Mr. Pierce."

* * *

208 "Q. Well, with regard to the Fischer line, you
209 depended not upon anything that Fischer told you but merely upon what Mr. Boomhower told you, is that correct?

"A. That's correct, yes.

"Q. And you did not even know there was an existing dealership contract in writing?

"A. I did not know there was any such writing."

210 "Q. Now, you demanded from Mr. Raney the keys on the occasion you mentioned?

"A. I said, 'Let's have the keys.'

"Q. And he gave you the keys?

"A. Yes."